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AT a COURT of OYER and TERMINER and GENERAL GAOL DELIVERY, holden in and for the City and County of New-York, at the City-Hall of the said City, on Tuesday, the 12th day of December, in the year of our Lord one thousand eight hundred and twenty.

PRESENT

The Honourable
WILLIAM W. VAN NESS, *one of the Justices of the Supreme Court.*
CADWALLADER D. COLDEN, *Mayor.*
PETER A. JAY, *Recorder.*
SAMUEL TOOKER, *Alderman.*

MURDER——JUSTIFIABLE HOMICIDE——MANSLAUGHTER.

ARUNAH RANDALL'S CASE.

VAN WYCK, *Counsel for the prosecution.*

OGDEN, PRICE, and WATTS, *Counsel for the prisoner.*

Where a challenge to the favour is interposed by the public prosecutor, on the ground that the Juror called had declared, on being called, that he was opposed, on principle, to the infliction of capital punishment, it was held that he was a competent witness before the triors.

Evidence of the declarations of the prisoner, that he called a woman, whom he introduces as a witness in his behalf, his wife, and that he lived with her as such, will be sufficient to disqualify her as such witness; but a written instrument between a man and woman, by which they agree to live together as man and wife, as long as they can agree, does not constitute a marriage, and cohabitation under such an agreement is abominable.

For an officer, with an execution, merely to call on a debtor with it, and take no inventory, is no levy on the goods, and if he afterwards break open the door to seize the goods, he becomes a trespasser.

Where a dangerous wound has been inflicted, and the wrong doer secures his door against a peace officer, who comes to arrest him for inflicting such wound, it is his duty, before breaking open the door for that purpose, to demand admittance; for if he does not, a breach and entry will render him a trespasser, but of the lowest grade.

Where such wound has been inflicted, any one, without warrant, has a right to arrest the offender.

One who had inflicted a dangerous wound on another with a dangerous weapon, and driven him from his house, secured the door; and, shortly afterwards, a peace officer with others came, and without demanding admittance, broke open the door, to arrest the offender, who refused to submit, and struck such officer a mortal blow, of which he died; it was held, that if at that time the prisoner harboured the felonious intent of killing, he was guilty of murder; but, that if he was actuated merely with an intent of defending his own house from invasion, and actually believed he had a right to do so, though this idea was erroneous, he was guilty of manslaughter only.

It is highly imprudent to attempt the arrest of one known to be a desperate man, without competent means of preventing him from doing mischief.

The prisoner was indicted for wilful murder.

The indictment, which was found by the Grand Jurors, summoned for the Sessions during the December term, and turned over to the Oyer and Terminer for trial, contained three counts. The first alleged, in effect, that Arunah Randall, late of the tenth ward in the city and within the county of New-York, labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the 28th day of November, in the year of our Lord one thousand eight hundred and twenty, at the city, county, and ward aforesaid, in and upon Henry G. Disbrow, in the peace of the people of the state of New-York, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said Arunah Randall, with a certain hatchet, made of iron and steel, of the value of twenty-five cents, which he the said Arunah Randall, in his right hand had and held, him the said Henry G. Disbrow, in and upon the right side of the head of the said Henry G. Disbrow, then and there feloniously, wilfully, and of his malice aforethought, did strike and penetrate, giving unto the said Henry G. Disbrow, one mortal wound, of the breadth of four inches, and of the depth of three inches, of which said mortal wound he the said Henry G. Disbrow, at the city, county, and ward aforesaid, from the said 28th day of November, in the year aforesaid, until the 1st day of December then next, and in the same year, did languish, and languishing did live, on which said 1st day of December, in the year aforesaid, at &c. he the

said Henry G. Disbrow, of the said mortal wound did die; and so the Jurors aforesaid, upon their oaths aforesaid, do say, that the said Arunah Randall him the said Henry G. Disbrow, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of the people of the state of New-York and their dignity.

The second count varied from the first in alleging, that the wound was inflicted on the right side of the forehead, and that it penetrated the brain; and the third count varied from the two others by alleging, that the prisoner inflicted two mortal wounds on the forehead of the deceased, which penetrated the brain.

The prisoner was also charged on two other indictments, with an assault and battery with an intent to murder. One of them alleged that offence to have been committed by him on Nathaniel Slawson, and the other on Thomas Foster, and the time laid in both was the same as in the first mentioned indictment.

On the day preceding his trial, he was arraigned on the three indictments; and, with an apparent indifference, pleaded not guilty.

JURORS SWORN.

David Dedera,	Cornelius Van Ranst,
Richard Grant,	John King,
Joseph Marsh,	Joel Platt,
Charles Archer,	Benjamin Green,
Michael Flinn,	Peter Pearsall,
David Hart,	Benjamin M'Ginniss.

Thomas Smith, on being called as a Juror, said, I am conscientiously opposed to the infliction of capital punishment.

Judge Van Ness. This is not a matter for the decision of the Court. Unless the parties will consent that Mr. Smith be set aside, the proper course is, for the public prosecutor to interpose a challenge to the favour, and his competency is to be tried by the two first Jurors sworn.

That course having been adopted, the triors were sworn. Van Wyck then called on Smith as a witness.

On an objection to his testimony by Price, Judge Van Ness said, that the point had been settled repeatedly, that a Juror so called was a competent witness before the triors.

Van Wyck (to Smith) Q. Have you conscientious scruples against the infliction of capital punishments?

A. I have. I conscientiously believe it to be wrong in principle.

Price. Q. If you were sworn as a Juror, would you not decide according to the evidence?

A. If I was sworn as a Juror, and if the verdict which I was to render would cause the death of a fellow-being, I would not render such a verdict, but would pronounce a verdict of not guilty.

Judge Van Ness. In that case you would not only set the laws of your country at defiance, but, to a certain extent, would be guilty of perjury. Your proper course undoubtedly would be to refuse to be sworn.

Smith was excused by consent.

Van Wyck opened the case to the Jury. He stated, that the prisoner was charged with a crime of the highest grade in our law, and that the Jurors were called upon to decide with firmness. The law of Murder has been the same for centuries. It has undergone no alteration in this country, and its principles are easily understood.—He was aware that some crude notions had prevailed, relative to the right of defending property, and to the extent of violence which might be employed for that purpose. This case involves a consideration of the law on this subject.

The counsel then proceeded briefly to state the prominent facts hereafter detailed, and concluded his statement by saying, that should it appear to be supported by the proof, this was as clear a case of murder as ever came before a Court and Jury. He conceived it necessary to recur to the law as far as it governed cases of this description. He read the following passage from the 4th volume of Blackstone's Commentaries p. 194:—

"We are next to consider the crime of deliberate and wilful *murder;* a crime at which human nature starts, and which is, I believe, punished almost universally throughout the world with death. The words of the mosaical law (over and above the general precept to Noah, that 'whoso shedeth man's blood, by man shall his blood be shed') are very emphatical in prohibiting the pardon of murderers, 'Moreover ye shall take no satisfaction for the life of a murderer, who is guilty of death, but he

shall surely be put to death; for the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.'"

He next read the definition of this offence from the same book, page 195:

"Murder is therefore now thus defined, or rather described, by Sir Edward Coke; 'when a person, of sound memory and discretion, unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied.'"

There will be no question in this case, it is apprehended, whether the prisoner was of sound mind and memory, but whether it was done with malice prepense; and to this point he read from the same book, page 198:

"The killing must be committed *with malice aforethought*, to make it the crime of murder. This is the grand criterion which now distinguishes murder from other killing: and this malice prepense, *malitia praecogitata*, is not so properly spite or malevolence to the deceased in particular, as any evil design in general: the dictate of a wicked, depraved, and malignant heart; and it may be either *express* or *implied* in law. Express malice is when one, with a sedate deliberate mind and formed design, doth kill another: which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. Also, if even upon a sudden provocation one beats another in a cruel and unusual manner, so that he dies, though he did not intend his death, yet he is guilty of murder by express malice; that is, by an express evil design, the genuine sense of *malitia*. As when a park-keeper tied a boy, that was stealing wood, to a horse's tail, and dragged him along the park; when a master corrected his servant with an iron bar; and a school-master stamped on his scholar's belly; so that each of the sufferers died; these were justly held to be murders, because the correction being excessive, and such as could not proceed but from a bad heart, it was equivalent to a deliberate act of slaughter.

"Also in many cases where no malice is expressed, the law will imply it; as, where a man wilfully poisons another, in such a deliberate act the law presumes malice, though no particular enmity can be proved. —And if a man kills another suddenly, without any, or without a considerable provocation, the law implies malice; for no person, unless of an abandoned heart, would be guilty of such an act, upon a slight or no apparent cause. No affront, by words or gestures only, is a sufficient provocation, so as to excuse or extenuate such acts of violence as manifestly endanger the life of another. But if the person so provoked had unfortunately killed the other, by beating him in such a manner as showed only an intent to chastise and not to kill him, the law so far considers the provocation of contumelious behaviour, as to adjudge it only manslaughter, and not murder. In like manner, if one kills an officer of justice, either civil or criminal, in the execution of his duty, or any of his assistants endeavouring to conserve the peace, or any private person endeavouring to suppress an affray or apprehend a felon, knowing his authority or the intention with which he interposes, the law will imply malice, and the killer shall be guilty of murder. And all these circumstances of justification, excuse, or alleviation, it is incumbent upon the prisoner to make out, to the satisfaction of the court and jury: the latter of whom are to decide whether the circumstances alleged are proved to have actually existed; the former, how far they extend to take away or mitigate the guilt. For all homicide is presumed to be malicious, until the contrary appeareth upon evidence."

The counsel requested the Jury to attend particularly to the last passage cited, and contended, that after the facts in this case on behalf of the prosecution should be laid before the Court and Jury, it would rest with the prisoner to make out his justification or excuse; and it would then be the province of the Court to determine how far they extend to take away or mitigate the guilt; not but that, in all criminal cases, the Jury were the judges of the law, as well as of the fact, but that in a matter peculiarly in the province of the Court, it was the duty of the Jury to receive their advice.

The counsel proceeded to read passages from the same book (page 179,) to show, that an officer has a right to kill a felon while escaping; and he argued, that when

a felony, was committed, or a dangerous wound given, it was not only the right, but the duty of all persons, without, warrant to arrest the offender. To this point the counsel cited Hawk. Pleas Crown, sect. 4th, p. 272. He also read from Foster, page 119, sec. 19, and page 320, to show, that, under similar circumstances, where the felon, or he who inflicted such wound, retreats to his house, and secures the door, that any one without warrant has a right to break it open, to arrest him, for that his habitation is to be treated as the den of a robber or a murderer.

He laid down this distinction, that where an officer has civil process to execute, he cannot legally break open outer doors to arrest the debtor; but, where a felony has been committed, or a dangerous wound given, any peace officer, or even a private citizen, is justifiable in arresting the offender without a warrant, or without demanding admittance. In further support of the positions taken, the counsel referred to 2 Hawk. C. 14, sec. 7. p. 179, and Hale's Pleas of the Crown, page 459.

Gershom G. Griffin sworn.

Van Wyck. Q. Will you give the Court and Jury an account of what happened when you went with Slawson to the house of Randall?

A. On the 18th day of November last, at the request of Nathaniel Slawson, I went with him to the house of the prisoner, against whom he had an execution. We knocked at the door; the woman shoved up the window of the second story, and inquired who was there. Slawson asked her if Arunah Randall lived there. The answer was yes. Slawson said he had some business; and she came down and opened the door. He supposed, from the name, that it was a woman, and when she came down, he asked her if she was the person, and told her his business. She said, that she was not the person, but that if he would go up stairs she would settle it. We then went up stairs. She stepped out, and shortly returning, said, that he would be in soon. He came in, and Slawson told him his business, and showed him the execution, which the prisoner took in his hand and read. He said he was not prepared to settle it at that time; it came unexpectedly to him. The reason why was, that he had applied for a *certiorari;* and, therefore, he did not know how the plaintiff could get an execution. Slawson explained to him how it had been obtained by giving security. Randall said, that in the course of a week he would settle it, and asked Slawson his name, and said that in that time he would call on him. We then left the house. When the week was up, and on the 25th of November, Slawson and myself called at Randall's house again. The inventory of the goods was made by me at another house. We went to another place and made the inventory, and I think it was before we went on the 25th, but am not certain. I am sure it was made before breaking the door on the 28th, and might have been made that day. On the 25th, we came and knocked at the door, and the woman came to the window and looked out, and said that Randall had gone down town, but would call and settle before he came back. On Monday, the 27th, we called again, and made the same inquiry, and received from her the same answer as before, except that she said something about his selling the sloop. On Tuesday, the 28th, we called again. She then said, that he had gone in the country. This Slawson told me; I staid a little way back. He went to the door and soon returned, and told me, that she said so. He mentioned to Major May, and others in the neighbourhood, that Randall had gone in the country. In the afternoon, we were informed by them, that he had not gone in the country, for that they had seen him soon after we went away in the morning. Slawson then said, "He has deceived me; and, as I have made the levy, I shall go to the door, and if I am not admitted, shall break it." In the same afternoon, we went again to the door, and found it fastened, as we had always before. Slawson knocked at the door, and the woman came at the window. He told her his business, and said he wanted to see Randall. She said, that he had gone in the country; but he said he did not believe it, for that persons had told him differently. He requested that either she or Randall would come down and let him take the goods he had levied on; and made the same request two or three times, and at length told her, that if she did not come down, he would break open the door, as he had a right to do so, having been there and levied on the goods.

She said she would not, and dared him to break the door, but he said he did not wish to do it, but had rather that Randall would come down and settle it like a gentleman. Slawson then tried the front door with his shoulders, four or five times, without starting it. We then went to the back door, and he tried it in the same manner two or three times, and it did not come open; he then took a bench with legs in it, and with that we broke the door. Slawson entered into the entry opposite the stairs, and went two or three steps up stairs, when Randall came to the head of the stairs, with his hatchet in his hand, coming down, cutting with his hatchet in this manner, *(the witness here lifted his right hand above his head perpendicularly, and brought it down and up again, several times, with rapidity,)* saying, "Out of my house, you d—d rascals, or I'll split your brains out." He repeated the same words, and kept his hatchet going. Slawson said, "Mr. Randall, do'nt do that, I am a peace officer." Randall followed him up within a step of the door. I was just behind Slawson, and we were both backing out. When he had got within a step of the back door, Randall hit him with the hatchet. The blow was aimed at his head, but he held up his arm to ward off the blow, which was received on the arm. We then left the house, and went to Dr. Dunnell's, to have the wound dressed.

Slawson told me to get some one to watch the house, and then go to the police for a warrant. I procured Joel Jones and Mr. Bolster to watch the house, and started to go to the police. I went down, and nearly opposite where the seventh and tenth ward court is kept, saw two marshals, and told them what had happened to Slawson, and that I was going to the police for a warrant. They told me that a warrant was not necessary. I then asked them to go with me, but they said they had particular business to attend to; and, about that time, Mr. Disbrow came out of court, and I mentioned it to him, and he said he would go.

Van Wyck. Q. Was he the constable of that ward?

A. Yes. There were two or three whom he got to go with him. With these citizens, and others who joined him, he went to the house himself.

Q. Did you go with him?

A. I did. When we came near the house, I advised him not to go in without a gun and bayonet. Disbrow pushed open the door, which was not fastened very strong, with a stick. I looked about the door for a club, and went to the door, where Disbrow stood with an axe in his hand. I omitted one thing: as we entered the door, hot water was thrown down from the top of the stairs, through the bannisters. Randall was at the head of the stairs; and Disbrow, who stood at the foot of the stairs, just before Foster and Place, told him what he had done; that he had wounded a man, and that he had come to take him to the police for it, and asked him to surrender. Randall said, that he would not surrender, and ordered him to go out of his house. These men then went up stairs to take him. Disbrow was a-head; the stairs were narrow. When they got up near the top of the stairs, Randall, with this hatchet, began to cut them on their heads. I saw him strike several blows; I cannot say how many, they went so swift. I heard the sound of the axe on the bones, the same as when a bullock is cut up.

Judge Van Ness. Q. Who did he hit?

A. Disbrow and Foster. Disbrow's head was cut in this fashion, *(the witness here made quick motions with his right arm, reaching over from the witness's stand, where he stood, as if striking one below him.)* After they received the blows, they came down instantly, and we all retreated from the house. I went immediately for a physician.

Van Wyck. Q. Did Disbrow carry the axe up stairs?

A. I did not see him. We then procured two or three guns and bayonets, and went to the house the second time to take him.

As we came near the front door, some one said, "We will have him, if we have to tear the house down;" and he then came down, and opened the door, and came out, with the hatchet in his hand. This is the hatchet. *(Here the witness produced a hatchet, of the largest size, ground down on each side by holding it on the stone in one horizontal position, and not as an axe is ground. One of its sides was stained with blood; the handle was, perhaps, two feet in length.)* He asked what we wanted

there. Mr. Henrietta told him, that he had nearly killed two or three men, and that they had come there to take him. Randall said, he had done it in his own defence. Mr. Henrietta said, that he had better surrender, and that he must submit to the laws of his country, and go to the police; and as Henrietta said this, we kept approaching towards Randall. I had the bayonet fixed, and at a charge. He said, he would surrender. I told him to drop the hatchet, as I did not wish to see a man surrender with a hatchet in his hand. At this instant, Mr. Henrietta, as he approached, dropped his gun, seized Randall, and wrested the hatchet out of his hand. He was then taken to the police.

Van Wyck. Q. Where were the pistols found?

A. After his examination in the police, he took two pistols out of his pocket, and said to Justice Christian, "See, if you think that I wanted to kill any one: I had these two, and might have used them."

Q. Were the pistols loaded?

A. No.

Q. What became of Disbrow?

A. When he came out of Randall's house, he held his hands over the wounds, while the blood was streaming over his hands, and exclaimed, "Oh dear! he has split my brains out."

Q. When did he die?

A. On the Friday following.

Q. When Disbrow came to Randall's house did he ask for any one?

A. He spoke to the woman at the window, but I did not distinctly hear what it was.

Q. Did he tell her his business?

A. I do not know that he did.

Q. How did he open the door?

A. He pushed it open with his stick.

Judge Van Ness. Q. Was the door fastened?

A. Not much.

Van Wyck. Q. After the door was opened did Disbrow tell him what he came for?

A. Yes; he told him that he came to arrest him for cutting Slawson.

Cross-examined by Ogden. Q. Where do you live?

A. At 78 Harman-street.

Q. What is your business?

A. A money collector.

Q. Are you not an understrapper to constables and marshals?

A. No; but I sometimes assist officers in doing their duty, in collecting executions and rents; this is what I do, and *you* may consider me an understrapper if you choose.

Q. Do you, or not, remember that when Slawson first called on Randall, that he said he would settle the execution on the 4th of December?

A. In the first instance, he said that he would pay it the next week, but afterwards he talked something about paying it on the 4th of December.

Q. When was this inventory written?

A. It was before the affray on the 28th, I am certain.

Q. Are you in the habit of levying on and taking goods?

A. Yes.

Q. Was you by, when the inventory was made?

A. I wrote it in his presence, and by his direction.

Q. Did you see Randall after the 18th until the 28th of November.

A. I did not.

Q. When you came on the 28th, did you not hear Randall tell Slawson that he had no business there?

A. The first words I heard him say were, "Get out of my house, you d—d rascals you, or I'll split your brains out."

Q. What did Slawson say?

A. He said, "Mr. Randall, you must not do that, I am a peace officer."

Q. Do you recollect that he said he was a peace officer, when he first came in?

A. I do not.

Q. I see the inventory is dated the 18th. How did this happen if it was written afterwards?

A. Slawson directed me to make it so.

Q. Describe to the Jury the stick with which Disbrow opened the door?

A. It was a round stick of wood, seven or eight feet long.

Q. Did he break the pannel of the door?

A. No; Slawson broke the pannel when he entered.

Q. Did Disbrow have the axe in his hand in the entry?

A. He had.

Q. Did you see him put it down?

A. I did not.

The Mayor. Was the inventory made from your recollection or that of the officer?

A. It was made from the recollection of us both, of the goods we saw in the house on the 18th. Slawson said to me, "The old fellow is going to trick us, and it is best to make an inventory."

Judge Van Ness. How long was it from the time you left the house, when Slawson was wounded, until you returned?

A. I should judge about three quarters of an hour.

Q. At what time in the day did Disbrow come?

A. At about three o'clock in the afternoon.

Q. Did Slawson, when he went into the house of Randall, on the 18th, say, "I levy on these goods," or any thing to that effect?

A. He did not.

Q. When he broke the door and entered, did he tell Randall that he had levied on the goods?

A. I think he said, that he had done no more than right, in breaking the door, as he had levied on the property; but of this I am not positive.

Van Wyck. Q. Oh! as to this wound of Slawson?

A. When he was struck, he held his hand on the wound to stop the blood, and said, "He has cut my arm off."

Dr. Eldridge G. Dunnell sworn.

Van Wyck. Q. Did you examine this wound of Slawson?

A. Yes.

Q. Will you describe it to the Jury?

A. It was on the under part of the arm, and appeared to have been given with some such instrument as this hatchet, while the arm was held up to ward off the blow from the head. The wound was inflicted in an oblique direction, cutting off the muscles and arteries, and going to the bone.

Q. Was not the wound a very dangerous one?

A. I considered it so. He bled very much, and without medical aid, might have bled to death; besides, it might have required the operation of amputation; and, in that case, his life would have been endangered.

Q. What is his situation now?

A. He is in a low state, very far from being well?

Q. Did you see Disbrow?

A. I did.

Q. What was the situation of the wounds on his head?

A. The principal wound was on the forepart of his head, in a glancing direction towards the right side. It was about three or four inches long, and came near the eye.

Q. Did not the instrument cut down into his brain?

A. That could not be ascertained until after his death; and then, on examination, I found that there was a cut in the brain, about two inches long, large enough to lay your finger in.

Q. Did he die of that wound?

A. I have no doubt he did.

Judge Van Ness. Q. Were there two wounds?

A. There were. There was one wound on the top of the head; the instrument with which this appeared to have been inflicted, must have glanced, and, therefore, did not penetrate the brain; but in the infliction of the other wound, the instrument penetrated the *longitudinal sinus* of the brain about two inches, as I have mentioned.

Q. Did you see the hatchet?

A. I did.

Q. Would it be sufficient to inflict such a blow, and would it require more than ordinary strength?

A. I do not think it would require the whole strength of a man to inflict such a blow. It would require more force on account of the hat.

Dr. Valentine Mott sworn. The wound which caused this man's death was that on the forepart of the head. There were two wounds. I examined him, and found there were little hopes of his recovery. It was found necessary, if any thing was done, to perform an operation, as that was the only means left. Bones had been broken down into the brain, and these having been removed, the operation of trepanning was performed. After his death, I examined, and found that the brain had been penetrated about two inches, and a very important part of it wounded, which rendered the case particularly dangerous, and, in truth, left very little hope of recovery.

Judge Van Ness. Q. Was there great force employed in the infliction of the wound?

A. I think the blow must have been a very severe one.

Van Wyck. Q. Was the wound of Slawson dangerous?

A. It was; he must have died without surgical assistance.

George Duryea sworn. The first I heard of it was, that word came down that Slawson's arm was cut nearly off. We went up there, and went to the house, and went into the entry; and, as we went in, he threw hot water upon us from the head of the stairs, and threw some on me. He found this would not do, and stopped. As we went in, Disbrow said, "Here's the old rascal's axe," and picked it up. It was at the foot of the stairs. Then he put the head of the axe on the floor, and ordered Randall to come down. Disbrow pulled off his coat, and threw that and the axe down, and said, "You old scoundrel, give yourself up." Randall did not come down, and they then went up stairs; and, as they went up, Randall either pulled out the hatchet from behind him, or from under his coat. I said, "There is the axe," but they did not hear me; and, as they went up, he began to hack on their heads. Then, after he had struck four or five times, he reached down to them, striking them; and they then came down, and Disbrow said, "For heaven's sake, he has split my brains out!" We then took hold of him, and led him into another house, where he was dressed. After this, I went home with him, and advised them to send for Dr. Mott. Whether they did or not I do'nt know.

Van Wyck. Q. Did Disbrow tell Randall that he wanted to arrest him?

A. He said, that he wanted him to come down.

Price. Q. How many men were there with you?

A. I cannot tell; perhaps seven or eight.

Q. How many went up with you?

A. Three or four.

Q. When you arrived there, which side of the house did you go?

A. The west side.

Q. Was there a fence there?

A. I don't know.

Q. When you arrived, how many persons were there?

A. Three or four.

Q. Where did the axe lie?

A. At the foot of the stairs.

Q. How far was it from the foot of the stairs to the back door?

A. Seven or eight feet.

Q. Was not this a very narrow entry?

A. It was. I suppose, two or three might stand abreast.

Q. Did you see Randall throw hot water?

A. I did; but, as I stood near the door, I could not see the head of the stairs.

Q. At or in what part of the stairs did he stand, when he struck with the hatchet?

A. He stood with one foot on the first platform, and the other foot down, so that he could reach.

Q. Did you see Disbrow have the axe in his hand after he took off his coat?

A. I did not.

Q. When they entered, did they walk directly up stairs?

A. No; when they saw the axe they stopped a little.

Q. Did you see a woman at the head of the stairs, cautioning them not to come up?

A. I did not.

Q. What vessel did he throw the hot water in?

A. A tin thing, holding about a pint.

Q. Do you know how he got the water?

A. I do not; but the woman might have brought it to him.

Dr. Henry Mead sworn.

Van Wyck. Q. Did you see these persons?

A. I saw Foster, and he had a wound on his head, which was slight, and another on his shoulder.

Q. Were these wounds dangerous?

A. That on his shoulder was, but he is under favourable circumstances at present.

Q. Is either Slawson or Foster able to attend court?

A. It would not be prudent for either of them. In the wound of Slawson there has been a hemorrhage, and the suppuration has severed the arteries.

William H. Smith sworn.

Van Wyck. Q. Are you the clerk of the seventh and tenth ward court?

A. I am.

Q. Did this execution issue from that court?

A. It did.

The Mayor, (examining the process, which was not sealed,) Does the law require that executions, issuing from your court, should be under seal?

A. It does not.

Van Wyck hereupon read to the Jury the execution, which was for $25 damages, and about $3 costs, in favour of one *Barent Gardenier*, against Randall, issued on or about the 18th of November last, by John Leveridge, Esq. the Assistant Justice of those wards.

John Place sworn. *Van Wyck.* Q. Was you at Randall's when Disbrow was wounded?

A. I was. I happened to be at the court, and some person came there and said, that Slawson's arm was cut off. We went up to Randall's house, and got over the fence, made of a few boards, into the yard, and broke open the door with a stick. When we went in, Disbrow saw the axe at the foot of the stairs, and taking it up, said, "Here is the old scoundrel's axe," and putting it down, pulled off his surtout, and laid that down. Randall stood at the head of the stairs, throwing down hot water.

Judge Van Ness. Q. Was any thing said to Randall about his having wounded Slawson?

A. I dont recollect that there was.

Van Wyck. Go on.

A. Disbrow went up first, Foster next, and I remained behind. When we went up, Randall fetched the hatchet from behind him. We did not see it until Disbrow got near him. We thought that the axe at the foot of the stairs was the only weapon he had; and, as soon as Disbrow got near him, he advanced and hacked away with the hatchet as quick as he could.

Judge Van Ness. Q. Did he come down the stairs?

A. I did not see him stir from his place, but he reached down or over.

Q. Was Disbrow known generally as the constable of the tenth ward?

A. Yes, all over the ward, ever since I can remember.

The Recorder. Q. Did Randall stand at the head of the stairs?

A. He stood on the first flight of stairs?

Ogden. Q. Did Randall say if they came up stairs he would split their brains out?

A. When Disbrow told him to surrender, he replied, "If you come up stairs, I'll split your brains out."

Q. How near was Disbrow when you first saw the hatchet in Randall's hand?

A. Not a step.

Q. How long had Randall lived there?

A. I do not know.

Francis Henrietta sworn. *Van Wyck.* Q. Was you one who went to arrest Randall after Disbrow was wounded?

A. I was. I live near, and there came a message, that a man's head was cut open, and I went over, and saw Dr. Mead dressing the wound, who said, that it was a mortal one. I said, "Is there no citizen who will go with me to take him?" I went over with others, and talked with him. He came out of the house with his hatchet in his hand, and I told him he had better surrender. He said, that his house was his castle. I said to him, "What a sorrowful thing it is for such an old man as you to be guilty of such horrid work." As I advanced on him with a bayonet fixed, which I got of a man for the purpose, Randall stood on the defensive, and raised the hatchet, but I told him I would take him; and, as I came near him, I suddenly dropped the gun, seized him, and wrested the hatchet out of his hand.

On his way to the police, he said he did not care if Disbrow did die; but he said, he hoped before he died he would repent. Among other things I said to him, "You know that 'whoso sheddeth man's blood, by man shall his blood be shed.'"—He said, that he knew the scripture said so.

Dr. Mead, on being again called, testified, that Randall had lived at that place five or six years.

Lemuel D. Start sworn.

Van Wyck. Q. Was you there?

A. I was.

Q. What did you see?

A. The first thing I saw was, that an officer was at the front door, and another at the back door, and the one at the back door said, "We can get in here," and they broke it open with a bench. As they entered, I heard the old man say, "Keep out of my house—keep out of my house." Randall cut one of them with his hatchet, and they then went for a reinforcement. I was on my way then to borrow a pitchfork; and, on my return, as I was coming by the house, I saw people gathering round the door. When Disbrow came, Randall threw hot water on them, and seeing this would not do, took his hatchet; and, as Disbrow

came near him, cut him, one blow on the head, and then cut Foster.

Judge Van Ness. Q. Did you hear Disbrow say any thing to him?

A. I heard him tell Randall that he had better give up.

By a Juror. Q. Where was the hatchet when Randall was throwing the hot water?

A. In his left hand. I saw it very distinctly.

Watts opened the defence of the prisoner to the Jury.

Gentlemen of the Jury,

The prisoner sacrificed all the advantages to be obtained from a delay he might justly claim, to avail himself of the talents, learning, and impartiality of the honourable Judge who presides on this occasion. In this trial, the life of the prisoner is not so much at issue as the existence of civil liberty. With a promptitude, arising from the consciousness of his innocence, he throws himself on the justice of his country, while humanity yet weeps over the victim of self-destroying violence.

The prisoner pleads, that the deceased brought his death upon himself by the exercise of illegal, unjust, and daring violence, which the prisoner was driven to repel by equal violence, and that the action he has committed, in opposition to the lawless violence exercised against him, is justifiable. However you or I may shrink at a defence of our civil rights, even to the death of the aggressor, it is well that there are men of that robust hardihood of character, that they dare defend their rights, even to the extremity of blood. Were it not for such, ruffian violence would predominate, and men become the tame slaves of lawless oppression.

Americans are, of all nations, the most obedient to the laws, as deriving their authority from the people's will. Foreigners, and all Americans who have visited other countries, concur in attesting this truth. I glory in this characteristic of the citizens of our republic. In other countries, obedience to the laws is enforced at the point of the bayonet and the sword; here, it is the free-will offering of the people, at the temple of justice, reared by themselves. Pause then, my countrymen, before you strip us of this glorious ornament of republican character. Examine with a scrutinising eye, whether a citizen has lifted his hands against the majesty of the laws, and has opposed the execution of the will of the people, expressed through their laws and courts, and executed by their officers, or whether these last, too prone to become hardened in character, and lawless in violence, by the execution of the law's last rigors, have not presumed beyond their authority—have not invaded the sanctuary of private right, and brought on themselves the just but severe penalty of their presumptuous audacity.

Though as an advocate I feel myself impelled by duty, to use every honourable exertion in defence of my client, yet there are other more powerful motives to stimulate every faculty to exertion.

It is not so much the life of this unhappy old man, which nature can, at the utmost, lengthen out but a few short years, that I now rise to defend, as the existence and the future duration of civil liberty; I say, of civil liberty, which consists in that protection which we derive from and under the laws, to our persons and property; and which is at once annihilated, if the meanest officers of law can, with impunity to themselves, violently break open the dwellings of our citizens; and if these last are to be punished for using the resistance necessary to repel such atrocious aggressions; if, for petty debts, doors are to be forced at any hour of the day or night, and these victims of oppression dragged from their houses, and their homes, their wives and their children, their property and their liberty, without pity or remorse.

It is this civil liberty, this protection of our houses and our persons, which is in danger, when *without warrant* or authority, the doors of private dwellings are broken open, to satisfy the execution of a petty debt, or to make an arrest for a *supposed* offence.

The common law anciently suffered no man to be arrested or imprisoned for civil injuries in the first instance; and, even after the debt or damages were fixed upon, and proved against him, his property, and not his person, was liable for its discharge. Liberty was thought of too much value, ever to be restrained, either as a punishment on the delinquency of the debtor, or as a satisfaction to the creditor. Increasing refinement, the introduction of the commercial system, and the necessity of credit have produced the existing state

of the law, by which the person may, in the first instance, be arrested for debt, and for not discharging it, be subsequently imprisoned. But the law has never gone further than to sanction this extremity, as to his person, when found at large. To make the arrest, or satisfy the execution, the law has never permitted the private dwelling of the citizen to be broken, his peace invaded, and himself dragged at any hour of the day or night to prison. These extremities are reserved for criminals, whose violation of the laws has forfeited all claim to protection.

Hence arose that maxim of the law so familiar to us all, that "A man's house is his castle." This is the emphatic language of the law. His castle; not that every man's house is built with battlements and towers, but that the law surrounds it with a defence more impregnable than fortifications can afford. This is civil liberty—these are civil rights; and by these are we protected in the enjoyment of our houses, our peace, and our property. It was for the enjoyment of these rights that our fathers contended, and freely gave their lives as a sacrifice at the altar of liberty. The prisoner has poured out his blood in defence of this valuable inheritance; and to his arm, with that of others, you owe it, that you sit here to administer justice in the name of the people of this state, instead of bending as subjects before the representative of a sovereign, or as slaves before the will of a tyrant. In this struggle, the prisoner first raised his manly arm, and opposed his body to death for his country. The same determined vindication he now makes of his personal rights, at the hazard of his life, that he then made of the rights of his country at the same hazard. He regards not himself, but he freely exposes his life in defence of the injured laws and liberties of his country.

Our law is the law of freemen, not of slaves. It does not place the citizen naked and defenceless, at the feet of a remorseless creditor. However poor and destitute he may be, the law yet sanctifies to him his fireside and his family. It knocks gently at his door to ask obedience to its decrees, and if he refuses to listen, it respects the feelings of the father, the husband, and the man. As it inflicts no tortures to extract confession, so it thunders no violence on those who do not first forcibly violate the personal rights of others; and even then it commands, that the offender be first duly notified of its requirements, and be demanded peaceably to obey its authority. We trust to show you that the prisoner has kept within the pale of these privileges, conferred on him by law: and that the deceased, by overstepping his authority, has been legally, however severely, punished for his aggression.

In addition to the proof on behalf of the prosecution, we shall substantiate the fact, that the constables never levied on the goods of the prisoner at the bar; that they never entered his house but once before the day of that daring outrage, which ended in the death of the deceased; that they never made any levy on the property of the prisoner, and that they never had any right to claim admission into his house, except by his consent. We shall insist upon it as the law of this case, and in this expect to be supported by the Court, that officers have no right to break open doors to execute any civil process whatever; that if they attempt it, they are to be considered as violent trespassers and aggressors, and may be resisted by all necessary force to repel their violence; and if they persist in following up their force, to every extremity they may be resisted, even to blood. We shall insist, that the resistance and wounding of Slawson was perfectly justifiable, and that it was not even an assault and battery. We shall then contend, that no offence having been committed by the wounding of Slawson, the deceased, who volunteered to arrest the prisoner, without a warrant, undertook it on his own peril; the peril of being a trespasser, if no offence had been committed. We shall contend, that the law permits the breaking open of doors to make an arrest, without warrant, in two specified cases only, viz.: in treason or felony, recently committed, or a dangerous wound given; and then, only, in the *pursuit*; that is, when the offence has been but recently committed; and that if there is time and opportunity to procure a warrant without *danger* of *escape*, then must a warrant be procured.

It appears from the evidence on behalf of the prosecution, that Griffin was on his way to procure a warrant; and we shall further make it appear, that he had it in his

power to have procured a warrant, and to have returned as soon as he did. There is then no excuse for Disbrow's attempting to make this arrest without a warrant; and, as he did so, and no offence had been committed, he took upon himself all the consequences of being a violent trespasser and aggressor, by breaking open these doors without warrant to make the arrest. And we shall further contend, that if he had authority to break open doors to make the arrest for the dangerous wound given, yet, he is required by law first to notify his business, and demand admission peaceably; and that, not having done so before breaking the doors, he was a trespasser from the commencement; and, as such, his death cannot be murder. We shall prove to you, that he made no such notification or demand, and that the prisoner's life, for that reason, is protected by the shield of law. We shall also contend, that the wound of Slawson in the arm is not that sort of *dangerous wound* the law contemplates by this expression. That by a dangerous wound the law means one by which life is directly and immediately, not consequently and remotely, endangered; and if the law is with us on this point, then had Disbrow no right whatever to force open doors to make this arrest, and he was a trespasser and aggressor throughout.

On making these facts appear to you, and establishing this to be law, we doubt not we shall acquit the prisoner to you of every crime, and that you will restore him to the bosom of society, honoured as one who has lived to be the guardian of civil and political liberty. He has not shrunk from the justice of his country. Twelve long months have not elapsed since his offence was committed; one short fortnight has seen him as innocent as any of you, and now he is agonising at the appalling horrors of a disgraceful and ignominious death. Great God! such are the vicissitudes of innocence and crime, of life and death. We ourselves are not secure from his fate; I tremble to think of it; but these are *my* fears; his firm soul looks on with constancy and steadiness. He conceives himself protected and justified by the laws of his country. He expects that you will dismiss him, acquitted from the guilt of any offence. That the few remaining years of his life will be spent with the reflection, that the country he defended in his youth, the liberty and laws he has achieved, have rendered him the protection he needed in his age; and that you yourselves will depart hence with the happy consciousness, that you have transmitted to your posterity unimpaired, that civil liberty and those privileges so dearly won by your fathers.

Hannah Marcellis, apparently about twenty-five years of age, was called as a witness on behalf of the prisoner, and sworn.

Price. We now call on the public prosecutor for the depositions which have been originally taken in this case. Q. (*To the woman,*) Was you examined as a witness in this case before the coroner's inquest?

A. I was.

Van Wyck. I shall prove that this woman is the prisoner's wife.

Judge Van Ness. You can ask her the question, if you think proper.

Van Wyck. I prefer proving the fact by others.

John Vanderbilt, Esq. the coroner, was then called as a witness on behalf of the prosecution, to prove, that on the inquest, this woman declared she was Randall's wife.

On an objection being taken to this testimony by Ogden, Van Wyck waved the examination, stating, that he understood Randall was married to her before Justice Holt.

Charles Holt sworn. *Van Wyck.* Q. Is this woman the wife of the prisoner?

A. I should think not. On or about the first of January last, they came before me for the purpose of completing a contract between them, by which—

Price. I object to this if that contract was in writing. Let it be produced.

Van Wyck. Did they agree to any thing verbally?

A. They agreed to live together, as man and wife, as long as they could agree; but this was not to extend to implicating property.

Judge Van Ness. Q. Was this agreement reduced to writing?

A. It was.

The Judge. It must be produced.

Joel Jones called and sworn on behalf the prosecution.

Van Wyck. Q. Do you know any thing about this contract?

A. I saw a written contract between this woman and Randall, witnessed by Charles Holt, Esq.

Q. What became of it?

A. As near as I can remember, it was in June last when they parted, and the contract was then burned up by consent.

Q. What were the contents of the contract?

A. That they should live together, as man and wife, as long as they could agree.

Q. Did she live with him as his wife?

A. Yes, until they parted in June, when the contract was destroyed.

Reuben Clark sworn. *Van Wyck.* Q. Did you hear Randall say, that this woman was his wife?

A. I heard them both say so. There was an affray, in which she was taken to the watch-house; and, at that time, they both said they were married.

Judge Van Ness. Q. Mr. Griffin, is this the woman whom you saw at Randall's house?

A. She is.

Ogden. This is certainly not sufficient evidence of a marriage, to exclude this woman as a witness for the prisoner. I have no doubt, that according to the decisions of the Supreme Court on this subject, cohabitation is sufficient evidence of marriage in ordinary cases; but here I would submit to the Court, whether it is not incumbent on the public prosecutor to establish a marriage, in fact, before this woman is to be excluded as a witness. This agreement did not constitute a marriage; it was an unlawful agreement, and the parties had lived together unlawfully. The contract was destroyed, and they were then man and wife no longer. On this state of the facts, the evidence on the part of the prosecution fails.

Judge Van Ness. Q. Mr. Clark, at the time you mention that they both said they were man and wife, were they then living together as such?

A. They were brought to the watch-house, and the officer said, that he had taken them out of the house.

The Judge. Q. Dr. Mead, do you know any thing about their living together as man and wife?

A. It was said they were married; it was the general report, and I have often seen her there.

The Judge. We think this evidence is sufficient to establish the marriage. It is unfortunate in this country that we have no law regulating marriages. There is no particular mode or ceremony of performing that important contract, nor any registry thereof prescribed by law; but I have often known widows recover their dower upon slighter testimony than we have in this case. Here it appears that they lived together as man and wife. The prisoner acknowledged, in the presence of Mr. Clark, that she was his wife; and, Dr. Mead tells us, that he has often seen her there, and that it was the general report in the neighbourhood. I know of no other way in which a marriage can be proved in this country. With respect to the writing about the property, that may be considered in the nature of a marriage settlement, and ought to be laid entirely out of the question.

But, in this case, Mr. Van Wyck, if you have not the most perfect confidence, perhaps it would be the best to have this woman tell her story, and let it go for what it is worth to the Jury. At the same time, I have no doubt whatever, but that this is a legal marriage.

The Mayor. At the same time, we wish it to be distinctly understood, that this temporary agreement, in writing, does not constitute a marriage; that it is unlawful, and ought to be laid entirely out of the case; but I concur in the advice to examine this woman.

Price, (to Hannah Marcellus.) Q. How long have you been acquainted with the prisoner?

A. Five or six years.

Judge Van Ness, (to the woman.) I wish you to understand, before you are examined, that if you are his wife you need not be examined *against him.*

A. I consider myself as his wife. If I am not, it is more than I know. I am willing to tell what I know.

Price. Q. How long have you lived in his house?

A. About two years.

Q. How old is he?

A. He has told me he was sixty-five.

Judge Van Ness. (to the counsel.) I presume that the examination of this woman is by consent.

Van Wyck. When I assented that she should be examined, I did not know but that the testimony, with regard to the mar-

riage, was doubtful; and, under this impression, I was governed by the advice of the Court. But I *now* object to this testimony as illegal.

Judge Van Ness. If I had known that this woman would have stated what she has now, I should, certainly, never have given that advice. To suffer her to be examined, would be subversive of one of the most salutary rules of law. For, suppose that this should be tolerated, a woman might be called on to give evidence which would criminate her own husband. This would be monstrous.

Price. With all due submission to the Court, we contend, that as there was an agreement on the part of the public prosecutor, that this woman should be examined, and the Court so advised, he is now held to that agreement, and ought not now to be suffered to retract that assent made in the face of the Court, especially since we have proceeded to the examination.

Judge Van Ness. If this woman had been examined to any thing material, then we should be bound to hear her whole story; but the only material thing she has said is, that she is his wife. For my part, I can never agree that she be further examined, without the consent of the district attorney.

The Mayor. That is my opinion. The case now stands on a ground quite different from what it did when the advice fell from the Court. Then the testimony respecting the marriage, though of the usual kind, was not conclusive, but now we have positive testimony. The principle why the woman is not admitted to give evidence in favour of her husband is, that he is presumed to exercise a control over her. In my opinion, there is no reason why, in this case, we ought to depart from this rule.

Griffin again called. Price. Q. Was any thing done with the execution after Tuesday, when Randall was apprehended?

A. John Ball, a marshal, took the execution, and went with me and levied on the goods.

Judge Van Ness. To save time, at this stage of the case, I think it necessary to state, that there had been no levy made on the goods before the affray.

Price. Was not Disbrow, and the men who came with him, much heated?

A. I do not know that they were.

Q. Was not you in a great passion?

A. No; but I was much frightened and agitated.

Q. Did you call him an old murderer?

A. I did not.

Q. Have you not said, that you should like to see him hanged?

A. I might have said so.

Joel Jones again called. Price. Q. Have you had a conversation with Griffin about the prisoner?

A. I have.

Q. What was it?

A. He said that the prisoner was an old murderer, and ought to be hanged.

Judge Van Ness. Q. At what time did he say this?

Q. After Disbrow's death.

Van Wyck. Was you not called on to assist in taking the prisoner?

A. I was.

Q. Did you go?

A. I did not.

Q. Why did you not go?

A. For two reasons: first, because I was not called on by an officer, and second, because I did not want to get into difficulty.

Lebbeus Loomis called and sworn on behalf of the prisoner.

Price. Q. Colonel Loomis, are you acquainted with the prisoner?

A. I am; I knew him forty-five years ago. I became acquainted with him in the regiment to which I belonged, in our march from Colchester to Roxbury. I know nothing of his general character. I have not seen him from that until this time, nor did I know before this affair, that he lived in the city.

Dr. Mead again called on the part of the prosecution.

Van Wyck. Q. What do you know about his general character?

A. I know nothing except by general report. I have heard, that he has been in the business of procuring women for gentlemen; and have been told by two or three, that he has offered to do this for them.

Van Wyck, before the opposite counsel had proceeded to sum up, cited, for their consideration, the case of *Richard Curtis*, Foster, 135; and he also referred to the same book, p. 255, 256, and 257. 1 Hawk. C. 31, sec. 38, ib. chap. 25, sec. 3. Hale's Pleas of the Crown, from

page 457 to 466, and 1 East. P. C. p. 320, 432.

Griffin again called on behalf of the prisoner.

Price. Q. Have you been excited by feelings of malice towards the prisoner?

A. I have not.

Q. While you was passing along here just now from the stand to your seat, did you not say, that you should like to see him hanged?

A. I believe I did.

The two following witnesses were sworn and examined on behalf of the prisoner, after Price had commenced summing up.

Col. Marinus Willett sworn. I know the prisoner, and have known him several years. He lived but a short distance from me, and was my tenant, but has since purchased the lot. I always considered him a good stirring honest man. There was one thing which gave me a good opinion of him: I was at the Recorder's office, and saw him applying for a pension. He did not obtain it; and I saw him afterwards, and asked him if he had obtained it, and he said he had not, for that he could not take the oath of pauperism. I thought this was a good trait in his character; but I cannot say what is the general opinion about him, as I am not much abroad. He always paid his rent punctually, is a still man, and correct in his dealings.

Evert A. Bancker sworn. I have known the prisoner about three years. I have known his character only from transactions which I had with him, in which I found him correct. I had a good opinion of him.

Price addressed the Jury to the following effect:

Gentlemen of the Jury,

You are now called upon to exercise one of the most awful duties: the high prerogative of taking away or preserving the life of a fellow being. You are bound to render your verdict according to the evidence and the law of the land. I mention this, because many conscientious men have entertained an opinion, that the community has no right to take away life, since it is the gift alone of the Creator. Yet it is certain, that if there is no doubt of the prisoner's guilt, you are bound, by the most sacred of all obligations, to render your verdict accordingly. He is an old man, and has but a little time to live. I do not ask that the rigour of the law should be mitigated in his favour, on account of his age and infirmities; but I conjure you to consider whether, under all the circumstances, this old man, now in the decline of life, and with a near prospect of another world before him, meditated murder; whether he harboured the felonious intent of taking away life.

It appears in evidence, that there was a judgment rendered against him before a justice, on a demand which he considered unjust; and, for that reason, had removed the cause before the Supreme Court by *certiorari*. He entertained an idea, though a mistaken one, that the suit was at an end, and that the execution could not issue. When the officers came with it, and it was explained to him how it was obtained, he treated them with kindness and hospitality, and told them he would settle it in a week. They left the house without making a levy on the goods. They came again and again, and find the doors secured. Not being a man of property, and perhaps not having made the contemplated arrangement of disposing of the sloop, which has been spoken of, to satisfy the execution, he closed his doors until that arrangement was effected, and he might have the means of satisfying the execution. On the 28th of November, these officers had no right, by the law of the land, to break and open the door; and so, I trust, the Court will instruct you. The prisoner, though poor, had seen better days. He was sitting quietly by his fireside, while two men, claiming to be officers, demanded of the wife at the window, admittance into the house. She spoke to them; and, most probably, according to his instructions, denied them entrance. They try to break open the front door, and not succeeding in this, they go to the back door, and force it open. They had no legal authority to break open this door and enter; and, in doing so, they became violent trespassers. What was he to do in this sudden emergency, but resist force with force? It made no difference whether the assailant was an officer or a robber; the prisoner had as much right to resist the one as the other. It is said, that he had pistols in his possession. He might have shot the assailants from the window, had he harboured a felonious intent, and been determined on

mischief. But he was sitting quietly at home, when two men, without colour of right, force their way into his apartment. He thought that he had a right to repel force with force; and if he was mistaken with regard to the extent of force which he had a right to employ, common charity ought to furnish some excuse. What was he to do? How was he to resist? Was he to retreat into an inner apartment, or oppose the feeble efforts of a worn-out life against two men in the vigour of manhood? No; with a hatchet in his hand he warned them again and again to desist. He said to them while entering, "Get out of my house, you rascals, or I'll split your brains out." He raised his hatchet, and continued to warn them against approaching. But, like banditti, firm to their purpose, they persist in their lawless invasion; and, it was not until he was driven to the last resource, that he employed violence. I do say, Gentlemen, that in such an extremity you will not scrupulously measure the exact degree of force, or the kind of weapon he ought to have employed in his defence. These men were thus rightfully expelled from the house. No levy had been made; and the first witness called, who was so anxious to make you believe so, knew that there was none. This was an after consideration—an after contrivance to give an appearance of legality to this scandalous invasion of private right. That inventory which has been spoken of, never saw the light until after the affray on the 28th of November. But, Gentlemen, the Court has stated, that here was no levy; and, no doubt, will so charge you.

Such was the nature of the force employed against the prisoner, and such was the resistance. Severe as it was, it afforded no right to Disbrow; and when he came with his band of trespassers, the prisoner stood on the defensive, and the Court will instruct you that he had a right to resist.

Griffin went to the ward court, and found three police-officers; and, after he had informed them what had happened, and that he was on his way to the police for a warrant, and they had informed him that it was unnecessary, they refused to go on his solicitation. Disbrow then volunteered; and, without any warrant or other legal authority, proceeded to the house of the prisoner. This he had no right to do. There was no felony then committing, no dangerous wound inflicted in the presence of the officer; and, according to the opinion of the Supreme Court, delivered by Mr. Justice Platt, in the case of Phillips *vs.* Hull. (11th John. p. 486,) Disbrow was a trespasser in making that breach and entry. That authority is the same laid down in Hawkins, and establishes the doctrine, that any person present during an affray, or while a dangerous wound is inflicted, has a right, without a warrant, to arrest the offender, but not after the affray has terminated. And I contend, from the principles of that case, that after Griffin had left the premises, no person had a legal right of entry without a warrant. A contrary doctrine would be subversive of the most important rights of the citizen. It is your duty, by your verdict, to preserve such a rule as will render it hazardous in the extreme for any one to volunteer in committing a trespass.

If the resistance made when Slawson entered was justifiable, and so I trust the Court will charge you, then the wound given could confer no right on those who made the subsequent breach and entry. But Disbrow went with five or six others; and, according to the testimony of Mr. Start, had a stake, and broke open the door. The means employed were calculated to excite terror. The first words were, "Here is the old scoundrel's axe." The officer then throws off his coat, as though he sought and expected a battle. Randall had then the hatchet in his hand. It was seen distinctly at the time the hot water was thrown, notwithstanding Griffin would make you believe it was concealed. This hatchet was the prisoner's only weapon. What was he to do? Was he to have his house broken open by ruffian violence, and sit down quietly under the aggression? He did not commence an attack upon them; he gave them every indication in his power that he considered them, as in truth they were, trespassers. He warned them over and over to depart. He threw hot water; and, it was not until after they advanced upon him, that he inflicted the unfortunate wound. Was he, I repeat it, to abandon his rights? and can you, on your oaths, say, that in giving these blows he was actuated by that malice which consitutes murder? No, Gentlemen,

I do not, I cannot believe that he intended murder. Standing above them, and driven to the last extremity in defence of his rights, in that trying situation he was not aware of the force of those blows. It must, indeed, be admitted, that every one would not have done as he did. You yourselves, most probably, would rather have abandoned your right. You would, no doubt, have deemed this expedient; but this is not a question of expediency, but of pure right. He always said, that "his house was his castle," and gave that as a reason for the defence which he made.

He was a soldier, and, most probably, imbibed that idea during the eventful period of the revolution, in which he took an active part, in resisting a nation of trespassers against a nation's rights. It is, after all, Gentlemen, a question, which of the parties in this conflict was in the right—which ought to have surrendered?

I have now finished the remarks that I have to make. It is but a few days since this affair occurred; the prisoner instantly submits to the laws of his country. I know the verdict of guilty is short; but, I conjure you, before you render such a verdict, to pause and consider. If, on the one hand, you should think it dangerous, on the score of example, that this old man, now on the verge of the grave, should escape with impunity, I beseech you, on the other hand, to reflect well on the dangerous consequences which would arise from a contrary example. In the sudden emergency to which he was reduced, it was not in his power to have made an immediate appeal to the law for the assertion of his rights. It is true, he might have submitted quietly to the aggression, and afterwards have had recourse, perhaps, to the miserable remedy of an action for damages against a gang of worthless ruffians. This the law does not require; and, by pursuing the contrary course, of defending his house and family from a sudden invasion, can you believe that he was actuated by malice. He defended himself when he considered that he had a right to do so. The laws of his country gave him that right; and, under the circumstances of peril to which he was suddenly reduced, surely, Gentlemen, you are not scrupulously to measure the exact degree of force which he ought to have employed. He is now on his trial for life or for death. In deliberating on your verdict, look not to what yourselves would have done had you stood in his place, but to what the law would justify.

You will, moreover, consider that this crime is laid to the door of one who, during a long life, has done all he could to gain a character; and that he is one of the few remaining men who have spent their early strength in toiling for our independence. He will descend to the grave soon enough without being cut off by an ignominious death.

I think, after all, Gentlemen, that this case resolves into this: if you believe that he had a right to defend himself, and that he was influenced by that belief in the resistance he made, you cannot say that he was actuated by malice against any man, and, therefore, cannot convict him of the crime of murder.

Gentlemen, I submit his case with confidence to your decision. I beg of you to reflect, that you are hereafter to answer at the bar of a higher and more dreadful tribunal for the verdict you are about to render. Let it be such as your consciences here and there can justify. I beseech you to weigh this well. Reflect on this case carefully, thoughtfully, anxiously. I ask for my client, at your hands, what you and I will ask at the last day—mercy and justice.

Ogden summed up the case to the Jury on the same side, and assumed the same ground of defence which had been occupied by his associate counsel.

Van Wyck addressed the Jury to the following effect:

Gentlemen,

From the facts in this case, as they have appeared in evidence, I shall endeavour to show you that this is a clear case of wilful murder. It has been represented to you that to convict this man of that offence, would be the destruction of civil liberty. But in this case, the prisoner has wantonly taken away the life of a fellow citizen; and civil liberty would, indeed, be sacrificed, if, by any means, such an offender should escape punishment. Human blood is justly held dear and precious in the community; and, when wantonly and inhumanly shed, must be avenged. I have read to you some law, and intended to have called your attention to more author-

ities, but I do not now consider it necessary; for all judges, and writers on the subject of homicide, have agreed, that all cases of killing amount to murder, unless some circumstances attending the act reduce it to manslaughter, or justifiable homicide; and, that when the act is proved, it is incumbent on the prisoner to make out his excuse or justification. Where a man is attacked by a robber, he has a right to turn upon the assailant and slay him. In sudden affrays and quarrels, if death ensue in the heat of passion, it may be manslaughter. And in the case where a trespass is committed on a man, he has a right to resist with force; but he is not permitted to make use of a deadly weapon, unless when life is in danger.

Look at this case, and you will see that from the beginning, and throughout the whole transaction, the prisoner was an aggressor, and that his conduct is marked with every circumstance of aggravation. The officers having an execution against him, call civilly at his house, and he promised to pay it in a week. They showed him every indulgence. They did not take the property, as they had a right to do. Still they ought to have made the levy; but this they omitted, only through courtesy to him, relying on his assurances of payment; and they left the house in a kind and friendly manner. They did not take the goods. It was decorous in them not to do so.

They came again and again for the money or the goods, found the door secured, and met with evasive answers. The officer came with the impression, that he had levied on the property, and so told the woman. I admit there was no actual levy made; still the officer thought the levy was made, and that he had a right to take away the goods. The prisoner was, and had been all the time at home. He knew the officers well: he knew what they came after; and that it was only to favour him that they had not levied on and taken away the goods in the first instance. I admit that "a man's house is his castle." But what then? The law was open for his redress. They came into his house, and what was his conduct? He threatened to split their brains out, and advanced towards them with rage and violence, swinging his hatchet! He had a legal right, it is true, to put them out of his house, and he might have used a cane to drive them out; but all the old maxims about *castles* can never justify or excuse the use of a deadly weapon on such an occasion. What right had he to do this? There is no such law in any code or book, nor is it written in the hearts of men. But, he pressed on two unarmed men in their retreat, struck a blow with a deadly weapon, cut off the artery, and inflicted a deep and dangerous wound. It was a dangerous wound; and when the prisoner struck that blow, he placed himself out of the pale of the law, and became a violator of the public peace. It is the duty of every man who is present when a dangerous wound is inflicted, to arrest the offender; and it was, therefore, the duty of Griffin, who was present when that wound was given, to arrest him, on his return with sufficient force, and have him secured.

It has been said or insinuated by the Gentlemen, that Griffin, having been out of sight after the wound was given, had no right to arrest the prisoner without a warrant. That is not the law, and so I think you will be instructed by the Court. It was not necessary that Griffin should go for a warrant. The inflicting of a dangerous wound is placed on the same footing with a felony, and it is so decided in the very authority read by the opposite side, from the 11th of Johnson's Reports. There is a distinction laid down in the authority between a mere trespass or breach of the peace and a felony, or the infliction of a dangerous wound. In the latter cases it is not only the right, but the duty of every man, without warrant, to arrest the offender.

Griffin having set two persons to watch the house, was proceeding to the police for a warrant, when he met two police officers, who knew the law on this subject, and they advise him that a warrant is not necessary. They being engaged, he soon after met with the proper officer to accompany him, the constable of that ward, and known for a long time as such. It was his duty to go, though his life might be endangered. It is the business of this useful set of men to go and expose themselves frequently to the most dangerous situations, and even to death itself; and when they are in the line of their duty, they merit the protection of the law.

Disbrow set out immediately while the thing was still fresh; while the man was still bleeding from the prisoner's outrage. The officer set out; he had the law with him; and he had the fact that a dangerous wound had been given. It was not a mere suspicion of felony or breach of the peace, and no notice was necessary. But some notice, it is certain, was given. Some words, which the witness does not recollect, passed between the deceased and the woman at the window.

It is not wonderful he should not have heard *the words;* his business was *to act*, and his attention was directed to other objects. There was, however, enough said to give notice of what they wanted. Unfortunately, Gentlemen, we have not here the best witness, who could inform us how fully the notice was given, and demand made. He has gone to his grave; and Foster, the other wounded man, is still too unwell to be here. But enough is before us without them, to show that he knew their business. He knew well what he had done; he had barred up his doors; and for no other purpose but to keep out the officers of justice, whom he knew would come to arrest him. They did come; and they found it necessary to break open the door. Under the circumstances, I do say, that a notice or demand of admission was not necessary; for, in the language of Foster, the house of the prisoner ought to have been treated as a den of robbers and murderers. Disbrow, unfortunately, found the axe of the prisoner in the hall, and thought this was the only weapon the prisoner had; and, but for this impression, that officer might still have been living. He took off his coat, and laid down the axe, which he might have used effectually for his own protection, had he anticipated an attack from the prisoner with a deadly weapon. He saw the officer, long known as such in the ward, advancing unarmed, and requiring him to surrender; yet this prisoner has the cruelty and ferocity of heart to strike him, defenceless as he was, with a hatchet, through the brains!

Can it be possible, that a Jury of the country can say, that such conduct is not indicative of malice, and that of the deepest malignity? No, Gentlemen, let this Jury, under such circumstances, acquit, and the next officer, who is murdered in the legitimate exercise of his duty, will lay his death at your door.

It is said the prisoner is old. It is the more to be lamented that he should, in this manner, take away the life of an old neighbour, who came in the regular discharge of his duty, in a character in which the prisoner had long known him. Old as he was, if he felt no reluctance, no remorse, in committing this outrage, you, Gentlemen, ought to have the less scruple in doing your duty promptly and fearlessly.

If, in this case, the deceased had been a mere private citizen, there might have been some question whether the offence committed amounted to murder; yet, the killing of Disbrow, a known officer, in the discharge of his duty, by the prisoner, clearly amounts to that offence. That useful class of men, so necessary to the preservation of law and order among men, without whose exertions no remedy could be obtained in the details and practice of civil government, ought to be protected in the discharge of their duty by that community for whose peace and safety they live a hard life, and run daily hazards.

I did intend, Gentlemen, to read other law, and produce other authorities, but I consider that it would be a waste of time. There cannot be stronger nor better law than that written in your own hearts; and unless you hold the blood of your fellow men precious, most deplorable will be the state of society. Shall it be said, that where a mere trespass has been committed, suppose it to be fifty times more aggravated than in this case, that a man's life may be taken, and that too in a country of laws? Loss of property may be remunerated; but life, when destroyed, cannot be restored.

I shall now leave this case to you, and shall say nothing as respects the prisoner's character or age. Most unhappy it is for him, that he has lived so long and good a life as is pretended, and should now stain it so foully by the commission of such an awful deed. I now leave the case with you, and I hope you will discharge your task according to the obligation of your oaths, and the great duty you owe to yourselves, to this community, and to the world.

Judge Van Ness then addressed the Jury to the following effect:

Gentlemen of the Jury,

It has now become my duty, on behalf of this Court, to call your attention to the nature of the accusation against the prisoner at the bar: to remind you of the material facts which have been proved on the trial, and to inform you of the principles of law which are applicable to the case as it stands before you. You have been told, Gentlemen, and truly, that you have to perform a very solemn duty. Every one acquainted with the human heart, will acknowledge, that even in cases where the crime of murder is most clearly proved, still it requires a very great degree of firmness in the Jury to pronounce a faithful verdict. It appears in evidence, that one of your officers has been slain: that a wife has been thereby deprived of her husband, and children possibly of a father. And though it is true, that you are not to be insensible to these considerations on the one side, and that on behalf of the prisoner, all your feelings of mercy are invoked, so on the other, you are not to lose sight of the real question for your decision; for these considerations have but little to do with your verdict. The main question for you is this: are you satisfied that, applying the law to the case established in evidence, the prisoner is guilty of the crime charged in the indictment? If so, you are bound by every consideration of duty to say so; and if you are not satisfied of this, you are bound, in like manner, to acquit him. But if you think the crime of murder not substantiated, then another question arises, whether you will convict him of the minor offence of manslaughter; for you ought to know, Gentlemen, that though he may not in your opinion be guilty of murder, you may still on the same indictment convict him of manslaughter, if you find that there is sufficient evidence.

As to the definition of murder, it has been read to you from the books, and I need not repeat what has been read. The criminal law of our country is founded upon good common sense. There is not much difficulty in understanding the rules. Wherever you follow the guidance of plain good sense, you will generally find yourselves supported by the authority of those books; and it is because the law in criminal cases is simple and plain, that juries are permitted to judge of the law as well as the fact. This you are not permitted to do in civil cases, because, from their nature, they are more difficult and complex.

I shall now, Gentlemen, according to my best judgment, assist you in taking a general view of the facts. There was, it seems, a judgment obtained in one of the ward courts in this city, against the prisoner, on which there was an execution in the hands of Mr. Slawson, one of the marshals. He went to the house and saw the prisoner, who said, that the execution came unexpectedly, since he had sued out a certiorari; and, therefore, did not see how an execution could issue. When the officer explained to him how it was obtained, the prisoner promised to arrange the business in a week, and the officer then went away, leaving the property with the prisoner, without making any levy. Slawson did nothing more than inform him, that this execution was in his hands. About a week afterwards, he went back and spoke with this woman, who is said to be the wife of the prisoner. She then stated that the prisoner was down town, and would call and settle it before he came back. When the officer came again, and I think this was on the 27th of November, this woman told a similar story, and said something about his selling the sloop. At another time, and on the 28th of November, she said that he had gone into the country. The suspicion of the officer was justly excited. And the money not being paid, he goes with the witness who was first examined; they broke open this house, and the first question of the law that arises is, whether that breach was lawful? I have no hesitation in saying, that it was unjustifiable and illegal. Even if he had made an inventory, and left it in the hands of the prisoner, it is very doubtful whether that would have given him authority to go again and break the house. When he went there on the 28th, he was certainly acting illegally in breaking that house. It appears that they broke open the back door with some violence and entered, and that the prisoner ordered them out in a very peremptory manner. This he had a right however to do. And provided he used only reasonable force, he had a right to put them out, on their refusing to go. But if Mr. Griffin is to be believed, the prisoner, standing on the stairs, ordered them out in an abusive man-

ner, exclaiming, "You rascals, out of my house, or I will split your brains out." Being alarmed, they retreated, backing out of the house. The prisoner followed, striking at them with the hatchet, and when Slawson was near the door, he received a dangerous wound in the arm, from a blow aimed at his head.

Now, you are not trying the prisoner for the violence committed upon Slawson; but, if you believe Griffin, there is not the least justification for the prisoner's act at that time, for no force was then offered to him. The officer was retreating, and no danger to the person or property of the prisoner could reasonably have been apprehended by him. Yet he followed up, and struck the officer in such a way, that with his arm he probably saved his life. A question here arises, whether the constable of this ward, or any other private citizen, had a right to arrest the prisoner, after he had thus struck and wounded Slawson. From the books, you can extract general principles only, and be guided in their application by similar cases that have gone before. You can have no positive and fixed rule for any individual case. After Slawson had received this wound, and retreated out of the house, his safety was the first object to which his attention and that of Griffin's would naturally be turned. He bled profusely; and if the blood had not been stopped, he would probably have bled to death. Griffin puts him in the hands of a surgeon, first leaving a person to watch, that the prisoner might not escape, and then went for a warrant to the police. It was his opinion, that such warrant was necessary; but, while on his way, he met several officers coming from the court of the tenth ward. They tell him that a warrant is unnecessary, and that any man may make the arrest. He requests them to accompany him; but, it seems, they were engaged. He related the affair to Mr. Disbrow, who was just coming out of that court; and, after some little conversation, he consents, with other officers of that ward, to go and arrest the prisoner. And now again, a question arises, had the officer a right to arrest that man without a warrant? I think, under these circumstances, that he or any other man, had a right to go and lay their hands upon him, in order to prevent his escape; for if the delay was to be incurred, of going for and coming with a warrant, the prisoner might have escaped, and public justice have been evaded.

Where a dangerous wound has been inflicted in the presence of witnesses, if they are first obliged to go to procure a warrant from a magistrate, before any one could detain the party, the escape would be rendered so easy, that justice would probably be eluded in almost every case. Our laws are not made for the city alone, but for the country at large, where a justice may live far distant from the scene; and, therefore, if every man was not authorised, and indeed bound to arrest a felon, escapes would be usual and frequent.

I consider it, therefore, entirely clear, that under such circumstances Disbrow had a right to arrest the prisoner, and take him from his house, to be dealt with according to the law of the land. But whether the officer went with or without a warrant, if the prisoner was quiet and made no show of resistance or violence, he ought first to have demanded the opening of the outer door. Admission must, in such cases, be first demanded, and refused. And though the presumption of law is always in favor of a public officer, and it is supposed that he is doing his duty according to law, yet, there must be evidence beyond the mere presumption, that admission was asked and refused, to authorise the forcing of a door.

Mr. Griffin says, that when they came to the back door, this woman appeared at the window in the rear. All that he can say, touching such demand is, that some words were spoken by Disbrow to the woman, which the witness did not distinctly hear. And I do not think that sufficient evidence has been produced, on behalf of the prosecution, that a demand had been made of admission into the house. I think the officer was mistaken then in supposing, that he was at liberty to break open the door; and he must therefore be considered a trespasser, but certainly of the very mildest kind. The killing of an officer in the due execution of his duty, is murder; for he is clothed with public authority, and protected in his duty by the law. But then this means the lawful exercise of his duty, and that must be shown. While the officer was thus breaking that door, he was not engaged in the lawful exercise of

his duty; and this brings up the most solemn part of the case, and the most serious considerations growing out of it.

It is not true, in my judgment, that an officer, acting *bona fide*, even though he gets wrongfully into the citizen's house, is therefore exposed to have his brains beaten out with impunity. After Disbrow had got into this house, he first takes up an axe, and unfortunately, and perhaps innocently, makes use of improper language. That was an indiscretion; but it is due to the memory of that man to say, that having heard of the wound inflicted with the axe, there was great reason for his expressing himself with warmth. He found the axe, and says, "Here is the old scoundrel's axe;" and, no doubt, thought that it was the weapon with which he had wounded Slawson, and that the prisoner had no other weapon. Disbrow found this old man at the head of the stairs, throwing hot water, and telling them, that if they came near the stairs he would split their brains out. The officer puts down the axe, pulls off his coat, and, after warning the prisoner to surrender, advances towards him; and, when within a step of him, received a mortal blow. Now, upon the whole, this may amount to murder, or not, according as you shall consider the facts established by the proof. Suppose, when the deceased was in the act of taking off his coat, the prisoner had come down, and while the officer was thus engaged, the prisoner had inflicted this wound. He could not, in that case, be considered as acting either in defence of his person or his property; and such an attack would have been, beyond all doubt, a murder. But you have heard all the circumstances that have attended the giving of this wound. These men go to the house of the old man, for the purpose of taking him prisoner. He first makes use of hot water against them. The officer laid down the axe which he had taken up, and going up stairs without any weapon The prisoner, as they advanced towards him, and when the deceased was within a step of him, gave to one of them a wound, likely to take away his life, and to the deceased another, that put an end to his existence in a few days.

If you should conclude, from the evidence you have heard, that the prisoner was frequently admonished to surrender; that the deceased was taking off his coat; that the axe was laid down, and that there was a pause, and a time to reflect; then, there is no reason to admit the excuse, that the prisoner acted under the sudden impulse of anger. He had before that, told them he would split their brains out; and if you think that when he gave that wound, he was actuated by a murderous intent, notwithstanding the house was illegally entered, it would be murder. If he was even acting in defence of his person and property, yet, if with a felonious and desperate intent, he takes away the life of a fellow creature, it is murder. But if in defending his person and property, he did not intend to take away the life of any man, then he ought not to be convicted of murder.

Now as to the question of manslaughter. I have made up my opinion on this subject, which I feel myself, in duty bound, to express, though not for the purpose of influencing your verdict; for you, Gentlemen, as I mentioned to you before, are to judge of the law as well as of the fact. I should think it a lamentable thing, if this man were to escape altogether without atonement of any kind; for though his crime should not amount to a murder, he is too dangerous a person to be set at large. There was no occasion to justify such violence. He was bound to submit to the laws of his country, and even though the laws might be violated in some degree towards him, he had not therefore a right to use a deadly weapon and to kill.

And in the cases where a man has this right of self-defence, there is a distinction to be observed between private men and public officers. If a robber, for instance, should enter your house in the night, and you should know that his intent was feloniously to take your property, you would have a right to shoot him. But here the prisoner was told by the officer, what the purpose of their coming was; and the outrage committed by the prisoner, was not necessary for his defence.

Three witnesses say, that the officer came within a foot of the prisoner before they saw the hatchet; while another witness states, that he saw it distinctly in the prisoner's left hand, while he was throwing the hot water.

Now upon these facts, and the law which I have thus stated to you, you will have to decide whether the prisoner at the bar is

guilty; and if so, whether his crime be murder or manslaughter.

If, however, you think that this man was either justifiable or excusable, you will of course acquit him, but if you are not convinced of this, you are bound to convict him either of murder or of manslaughter. If you think his resistance was lawful, and that the violence he used was not disproportioned to the necessity of the occasion, you will acquit him altogether.

The Jury retired, and after a consultation of about ten minutes, returned a verdict of manslaughter.

On Wednesday the 13th day of December instant, the prisoner was put to the bar; and, on being arraigned for sentence by Mr. Wyman, the clerk, in the usual form, addressed the Court to this effect:

I am one of the old revolutionary soldiers, and have spent the early part of my life in the service of my country. I am now sixty-six years of age, and have not long to live. When this unfortunate affair took place, I had no malice towards any man. They broke open my house, and entered in a riotous manner, when I was peaceably at home. I gave them warning over and over again, and told them my purpose if they persisted. I considered my house as my castle, and thought I had a right to defend myself; and I think it very hard that I should be imprisoned for what I have done.

Judge Van Ness then pronounced the sentence of the Court upon the prisoner to the following effect:

Arunah Randall, in pronouncing the judgment of the Court upon you, I shall say but a very few words; for, from the information we have concerning your past life and character, I am convinced that to attempt to move your obdurate heart to repentance, or to excite in you a due sense of your awful situation by any thing I can say, would be in vain. You are a hardened and abandoned old man, lost to all sense of moral and religious obligation. You are now tottering on the verge of eternity. You must shortly appear before another tribunal, where the spirit of Disbrow will rise up in judgment, as your accuser. You have made the wife of one of your neighbours a widow—his children fatherless. You have hurried him, in the vigour of life, unprepared to his grave; and you have inflicted very dangerous wounds both on Slawson and Foster. Should it be the will of Him who sustains the lives of us all in his hands, that they should die of those wounds within a year, their blood will be at your door, and you may again be brought to trial for your life. On this occasion, your offence commenced with a fraud upon Slawson, and was consummated in blood. Your conduct throughout the whole of this transaction was marked with a cruel ferocity, almost without example in this community. You are covered with blood. You have been brought up in a Christian country, where the word of God is read and believed, and atonement through the merits of his Son taught, as the only means of salvation. You have heard from your childhood, that "He that sheddeth man's blood, by man shall his blood be shed;" yet, you have not profited by these advantages, and it appears before us, that without any regard to decency, or the opinion of mankind, you have lived with a woman, to whom it is uncertain whether you were married or not, a dissolute and abominable life. You are a poor, solitary old man. Hereafter you are not to mingle in society. You are no longer to associate with your profligate companions. Your heart is now hard; and, through the whole of your trial, no signs of contrition for the deed you had committed were evinced by you. You seem to rely much on your revolutionary services; and, no doubt, this consideration in some measure influenced a verdict of manslaughter in a case, the prominent features of which are, in my opinion, strongly marked with that malice which brings it very near the crime of wilful murder. But, be assured, that the time will come, when you will remember these words, and, in your confinement, they may afford you some consolation. The time will come when your heart will fail you; your body waste, and your strength decay. During the confinement to which we are about to consign you, there will be ample time for repentance. We have thought it right, for the offence of which you stand convicted, to order and adjudge, that you be confined in the state prison, at hard labour, for the term of *ten years*. And here my duty as a magistrate, towards you ceases: but, as a man, I earnestly exhort you to repent of your sins, and prepare to meet your God

Before Him, neither services nor professions will avail you. Your doom will be irrevocable; it will be just. During the remnant of your miserable days, strive to make your peace with Him, and for redemption through the Saviour. He is the fountain which cleanseth from all sin; and I earnestly recommend you to apply to Him for pardon. Let this be your unceasing object; and, during your remaining pilgrimage on earth, endeavour to expiate the enormous offence of which you are guilty, by sincere contrition and repentance. I have done with you. I hope that what I have said to you may be attended with some advantage; if not, I am conscious of having discharged my duty to a hoary headed, miserable old man.*

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of said City, on *Monday*, the 4th day of *December*, in the year of our Lord one thousand eight hundred and twenty.

PRESENT

The Honourable

CADWALLADER D. COLDEN, *Mayor.*

SAMUEL TOOKER and STEPHEN ALLEN, } *Aldermen.*

P. C. VAN WYCK, *Dist. Att.*

J. W. WYMAN, *Clerk.*

(GRAND LARCENY—CONFESSION—PRACTICE—EVIDENCE.

BERTHINA TUCKER, *alias* BONKOVEN'S Case.

VAN WYCK, *Counsel for the prosecution.*

PRICE and PHOENIX, *Counsel for the prisoner.*

One indicted for a felony must sit in the prisoner's box during trial, unless on bail; in which case, he or she may sit by his or her counsel.

A confession made under the influence of threats, or promises of favour, is not to be received; but the fact of finding goods, in consequence of such confession, and by the showing of the prisoner, is good evidence, that being a fact independent of such confession.

The admission of testimony at any stage in a criminal case, rests in the sound discretion of the Court; and where the testimony had closed on both sides, and the counsel for the prisoner, in his remarks to the Jury, insisted on an acquittal, because the district attorney had not proved that the property belonged to the persons mentioned in the indictment. It was held, that he might recall and examine the principal witness in the case to that point, inasmuch as this omission, during his previous examination, was the result of mistake.

The prisoner was indicted for grand larceny, in stealing one piece of silk, of the value of $45, the property of *Ezekiel I. Moore* and *William S. Moore*, on the 27th day of September last.

The prisoner had been bailed, and when brought to trial, on the 15th instant, she was about being put in one of the prisoner's boxes, where felons are usually placed during trial.

The Mayor intimated to the counsel, that although for some time past the Court had seen fit to adopt and adhere to a general rule, that every one charged with a felony, without discrimination, should be placed in the box during trial, yet he was aware of the hardship of such a rule, as applied to every case. The reason of the rule was, that the safety of the prisoner during trial might be insured. The Court had long contemplated the adoption of some other rule, less rigorous and more consonant with the principles of humanity; and, at length, had determined, that all persons charged with a felony, and who were not bailed, should sit in one of the prisoner's boxes, during trial; while those who were out on bail, might have the privilege of sitting by and instructing counsel.

A general rule to that effect was entered in the minutes by Mr. Wyman, according to the direction of the Court.

Ezekiel I. Moore, on being sworn, testified, that on the day laid in the indictment, he lost from his store a piece of silk, containing about sixty-four yards, which he advertised; and, having ascertained that information had been lodged at the police, that some silk of that description had been sold by Mrs. Covert, the prisoner's sister, at 87 Division-street, opposite to Mr.

* We have understood, that when the prisoner had arrived at the state prison, and the keepers were preparing him for confinement, in the usual way, by shaving off his hair; as the locks fell, he took some in his hand and bursting into tears, said, "Little did I think that these gray hairs would ever come to this."

Pigott's, procured a search-warrant, and with one or more police-officers, searched her house; and, in a part of the premises occupied by Mrs. Persani, found seven yards. and Mr. Pigott gave him information, that there were fourteen yards in his house, all which silk was sold by Mrs. Covert. About this time, a Mrs. Gender, from John-street, came up there, and alleged that she had lost silk, and said that Mrs. Covert had taken it away. Mrs. Gender, with the witness, then went to the house of the prisoner, in Orange-street, to look for Mrs. Covert, but did not find her, as she had gone to her house in Division-street. The witness procured two police-officers, and went with them there. Mrs. Gender, on looking at the patterns, said it was not her silk, and Mrs. Covert alleged, that she got it from her sister, the prisoner. The witness then went with the officers to the prisoner's house, in Orange-street, and received word from her children, that she had gone into the country; and, at other times, different stories. At length she was found by the witness, in a house next to that occupied by her. She was brought to the police-office, and Mrs. Covert being there, they mutually accused each other of selling the silk. The prisoner was examined by Justice Christian; and, shortly afterwards, the witness was told by that magistrate, who had conversed with the prisoner in confidence, that she would confess the matter to him; and, having retired into a separate apartment in the police with her, she began by imploring the witness that he would be easy with her, if she confessed, and he told her he would, as all he wanted was his silk. She then said, that she had parents who had taught her better, but the Devil tempted her to steal it. The witness then went with her to a house in Chapel-street, and got fifteen yards, cut in two pieces, which she acknowledged that she had sold, and offered to pay the persons to whom she had sold it. In fine, through information derived from the prisoner, the witness obtained the whole of his silk, thus divided into patterns for dresses, and sold by the prisoner to different persons.

In her examination in the police, it is stated, that the examinant has passed by the name of Bonkoven, because Thomas Bonkoven boards with her. She did not give Jane Covert any silk, nor has she had any silk in her house in six months. She bought the best part of a piece of silk, which she gave Mrs. Covert at a store in Pearl-street, and did not receive a bill.

John Chatfield, a clerk in the store of Messrs. Moore, on being sworn, testified, that about ten minutes before the piece of silk laid in the indictment was stolen, the prisoner came into the store, where he was alone, and purchased a dress of silk, which, without paying for, she left, and directed that it should be sent to No. 100 Bayard-street. About five minutes after she had gone, he missed the piece of silk; and, when the young man belonging to the store came in, the witness went with the dress in search of the place where she had directed it to be left, and no such number could be found.

This witness further proceeded to state, in confirmation of the testimony of his principal, in what places pieces of silk were found; and, particularly, that in consequence of information derived from the prisoner, he went to a house in the Third Avenue, which is in the suburbs of the city, and found seven yards.

Phoenix summed up the case on behalf of the prisoner, and was followed by Price, who in the course of his remarks to the Jury, insisted that they could not convict the prisoner, because it had not been proved that the property laid in the indictment belonged to *Ezekiel I. Moore* and *William S. Moore.* It was also strenuously urged, that the confession made to the principal witness ought to be discarded, because it was made under the influence of a promise; and that, independent of that confession, there was not sufficient evidence to charge the prisoner with the possession of this silk.

After the counsel had concluded his remarks on the testimony as it then stood, Van Wyck offered to prove by the principal witness, that the silk was the property of Ezekiel I. Moore and William S. Moore.

Price objected to this evidence at this stage of the case, on the ground, that in a criminal case, and against mercy, such a defect in the testimony ought not to be supplied.

The Mayor said, there was no positive rule applicable to this case, which would prevent the admission of this testimony

This a matter resting in the sound discretion of the Court; and though there are many cases where the Court would not consent to open an examination at this stage of the case, yet where an omission to produce important evidence manifestly appeared to be the result of inadvertence and mistake, he would not consent to its exclusion. There is no other rule with which he was acquainted, applicable to a case of this description than this, that the Court, in their decisions, should endeavour to do substantial justice; and, in the opinion of the Court, it would not be doing substantial justice to prevent the district attorney from asking Ezekiel I. Moore whose property this was. At the same time, the counsel for the prisoner are at liberty to produce counter testimony, and to sum up upon the additional testimony.

Ezekiel I. Moore, on being again called on behalf of the prosecution, testified, that the silk belonged to himself and his brother, William S. Moore, as partners.

After Van Wyck had summed up the case, the Mayor, in his charge to the Jury, instructed them that although a confession made under the influence of threats, or promises of favour, was not to be received, yet, if property be found by reason of such confession, and by the showing of the prisoner, that fact being independent of the confession, is good evidence. And, he left it to the Jury, under all the circumstances of the case, to determine, whether the information given by the prisoner of the various places where the silk was found, and her offer to pay for the silk in Chapel-street, did not afford a just ground to infer that she had the property in her possession. He brought to the view of the Jury, the strong circumstance of her having been to the store, and purchased a dress of silk about ten minutes before the piece was missed, and of her having directed the dress to be sent to a number in Bayard-street, which could not be found. In the absence of all testimony, continued the Mayor, are we not bound to believe that she never lived there. In the conclusion, he put it to the Jury, whether, laying the confession made to Moore entirely out of the question, there was not sufficient testimony to show that she had possession of this property. If so, is she not, according to one of the plainest rules of evidence, bound to account for such possession? Has she done so?

The Jury acquitted the prisoner.

(COUNTERFEITING——UNNECESSARY ACCUMULATION OF TESTIMONY.)

TIMOTHY CONNER'S Case.

VAN WYCK, *Counsel for the prosecution.*
PHOENIX, *Counsel for the prisoner.*

Where there is ample testimony, which is not impeachable, to support that which is necessary to establish, to produce additional testimony, but of a contrary character, may destroy the case, especially if this additional testimony be relied on.

The prisoner, a lad about seventeen years of age, was indicted with one *Andrew Bradon*, for passing and having in possession, with an intention of passing, two $2 counterfeit bills on the Mechanic's and Farmer's Bank of Albany, both being of the same number (3919) and of the same letter (X.)

The bills having been proved to be counterfeit by unimpeachable testimony, the following facts, in the first instance, appeared on the part of the prosecution by testimony of the same nature:

The prisoners went together to the grocery store of Samuel Beadle, in Grand-street, near the East River, on the evening of the 31st of September last, and Bradon called for two glasses of liquor, which were drank by them, when he presented one of the bills laid in the indictment to Beadle, who went to a neighbouring store kept by Jedediah H. Sayre, and obtained of him the change for the bill, and paid it to the prisoners, who departed. In about an hour afterwards, they came to the store of the latter gentleman, called for two glasses, which they drank, when one of the prisoners laid on the counter to get changed, the fellow of the same bill before passed at Beadle's. Sayre knew or suspected it to be bad, and told them that he did not like the bill, when Conner said, that *he knew it to be good.* Sayre, recollecting that he had changed a bill on the same bank, and one of the same denomination for Beadle, went to his store, and asked him whether he should know the men who passed that bill if he should see them. Beadle an-

swered in the affirmative, and went with Sayre to his store, and immediately recognised them. Conner then paid for the liquor, and wanted Sayre to deliver him the counterfeit bill, which he refused to do. A watchman was then called, and, on searching the prisoners, silver to a small amount was found on both of them. Bradon said, that Conner had given him the two bills to pass, and was to give him a half dollar for passing each bill; but Conner denied his having any concern in passing the bills.

After the introduction of this testimony, Bradon was called as a witness on behalf of the prosecution, and gave a relation of facts, which clearly evinced that he knew the bills to be bad when they were passed; a relation which, in its essential parts, was not corroborated by other testimony, and, according to the plain rule of evidence in criminal cases, not entitled to credit.

The amount of it was that the witness, at the grocery store of Timothy Sullivan, in Lombardy-street, saw Conner, who induced him to go to Corlaer's Hook; and, on the way there, gave him a pocket-book, containing the $2 bill passed at Beadle's, offering him a half dollar for passing it: and, that having succeeded, Conner took the change, and paid the witness the sum promised, and proposed to him to go to Sullivan's for more money of the same kind: that they then went there, and Conner gave Sullivan the change, and received another bill, and they then returned and passed it to Sayre, as before related; and yet the witness did not know the bills to be bad.

In summing up, the counsel on the one side, contended, that Bradon's story ought not to be believed by the Jury, while on the other side it was admitted, that *unless that testimony was believed, they could not convict the prisoner.*

The Mayor, in his charge, recapitulated the facts in the case, independent of the testimony of Bradon, and left it as a question for the Jury to determine, whether those facts alone were not sufficient to show, that the prisoner knew the bills passed to be counterfeit, and that he was aiding, abetting, and assisting in passing the bills. And he also left to the determination of the Jury the question, whether Bradon was to be believed. If he was, there was no doubt but that Conner knew the bills bad, and was concerned in passing them.

The Jury acquitted the prisoner.

(BURGLARY—GRAND LARCENY.)

JOHN SMITH, WASHINGTON TAYLOR, and WILLIAM M'MURRAY'S Case.

VAN WYCK, *Counsel for the prosecution.*

PRICE, *Counsel for M'Murray*, SCOTT, *for Taylor, and* RODMAN, *for Smith.*

In burglary the ownership must be laid in the indictment in him who has an interest in the premises broken, either as owner or occupant.

The prisoners were indicted for a burglary, in breaking and entering the dwelling-house of *John Richardson*, on the night of the 25th of November, and stealing a quantity of dry goods, specified in the indictment, amounting to more than $25, the property of John Pell.

The facts in brief were, that the store in the occupation of Pell, at 158 Chatham-street, having a door in the back part leading into an entry, communicating with the upper part of the house occupied by Richardson as a dwelling-house, was broken and entered on the night of the day charged in the indictment, and the goods stolen; and, soon after, by the vigilance of Hays and other police-officers, separate parcels of them were traced to the dwellings of the prisoners, or found in their possession; and their several examinations in the police left no doubt but that they were the felons. The door leading into the entry, at the time the felony was committed, was bolted on the inside, and had not been used as a communication for some time then past; and Richardson, who hired his apartments of Mrs. Pell, had no interest whatsoever in the store.

The counsel for the prisoners insisted, that the ownership of the house was not properly laid, inasmuch as Pell, whose store was broken, and Richardson, the occupant of the dwelling above, held by separate and distinct tenancies. To this point, Scott cited and read a passage from 3d Vol. Chitty, p. 1097.

On this principle, the Mayor charged

the Jury, who acquitted them of the burglary, and convicted them of grand larceny; and, on the last day of the term, Smith was sentenced to the state prison for five years, Taylor for seven, and M'Murray for fourteen years.

In pronouncing sentence, the Mayor remarked with regard to Taylor, that no longer ago than the 14th of October, he was discharged from the penitentiary; and, with regard to M'Murray, that his case was extraordinary, that he was as treacherous as he was felonious. About six months ago, by the mercy of the government, he had been admitted as a state's evidence against several persons charged with burglaries and grand larcenies; that, on their trial, his testimony showed that he was full as culpable as any of them, and they were consigned to the state prison; that, shortly afterwards, he was convicted of conspiring to break the bridewell, and was sentenced to the penitentiary, from whence, by some unaccountable means, he had been discharged by a pardon. And in a week after his discharge, he is here again!

ASSAULT AND BATTERY—REGULATIONS OF THE BOARD OF HEALTH.

THOMAS SLOVER and ALFRED P. EDWARD'S Case.

VAN WYCK, *Counsel for the prosecution.*

HATCH, *Counsel for the defendants.*

An assistant to the Board of Health in the due execution of the duties of his office, under a proclamation of the Mayor of New-York, prohibiting communication between that city and one where a pestilence prevails, is to be protected; and every interruption he meets with, if possible, will be punished.

The defendants were indicted for an assault and battery, committed on George Mills, on the 9th of September last; and the indictment, in one count, charged the defendants with the same offence committed on Mills, while in the due execution of his duty as an assistant of the Board of Health in the City of New-York.

The facts were briefly these: during the last season, a pestilential fever prevailed in Philadelphia; and the Mayor of the City of New-York, in pursuance of an act of the legislature, issued and published a proclamation, prohibiting communication from the former to the latter place, and calling on all officers and citizens to assist in preventing persons coming from thence into this city. The Mayor was also the President of the Board of Health, and that body appointed Mills, the prosecutor, as one of their assistants in carrying the prohibitions of the proclamation into effect.

In pursuance of this authority, on the day laid in the indictment, Mills found Slover about landing from a Staten-Island ferry-boat; and, being informed that he had not a permit to come from the quarantine ground, asked him whether he had. Slover, at first, said he had one; but, on being requested to show it, said he had lost it; and, while Mills was conversing with some of the other passengers on the wharf, Slover sprang from the boat to the wharf, and laid hold of Mills, turning him partly round with some violence. He then went immediately on board the Nautilus steamboat, and was followed by Mills, who called after him; but he walked on as if he did not hear the call. Mills went on board, and laid his hands on Slover, to prevent his coming on shore; when Edwards, the other defendant, and a stranger to both parties, interfered, by laying his hand on Mills, but not with any great degree of violence.

After the arguments of the respective counsel, the Mayor, in his charge, instructed the Jury, that if they believed the testimony, it would be their duty to convict Slover; and if they believed that Edwards, in laying his hands on Mills, intended to interrupt him in the discharge of his duty, they ought to convict him also. The principal question with the Jury ought to be, have these men acted as good citizens, and did they intend to interrupt this public officer?

Slover was convicted and fined $20 and the costs, and Edwards acquitted.

(LARCENY—CARRYING AWAY.)

WILLIAM SCOTT *al.* LEVI COHEN'S Case.

VAN WYCK, *Counsel for the prosecution.*

DR. GRAHAM, *Counsel for the prisoner.*

The least removal of property from the place where it is deposited, is a sufficient *carrying away* to constitute larceny.

The prisoner, in November term, was indicted for a grand larceny, in stealing the money of John Knapp, specified in the indictment, on the 6th of October last.

It appeared that while Knapp was at the horse market, the prisoner secretly thrust his hand in Knapp's side coat pocket, containing his pocket-book and the money laid in the indictment. At first, Knapp let him alone; but, after he had lifted it up from the bottom of the pocket, and just as he was about carrying it away, Knapp put down his own hand on that of the prisoner, who relinquished his hold of the pocket-book, when it dropped into its former place.

Graham stated to the Court that the only question in the case was, whether here was a sufficient carrying away to constitute larceny.

The Mayor, on the authority of the case of James Lapier, convicted at the Old Bailey in 1784, of robbing Mrs. Hobart, on the highway,* decided, and so charged the Jury, that here was a sufficient carrying away to constitute larceny.

The Jury convicted the prisoner, and he was sentenced to the state prison seven years.

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* Mrs. H. was coming out of the Opera-house when she felt the prisoner snatch at her ear-ring, and tear it from her ear, which bled, and she was much hurt; but the ear-ring fell into her hair, where it was found after she returned home. The Judges of England decided that the ring, being in the possession of the prisoner for a moment, separate from the lady's person, was sufficient to constitute robbery, though he lost it again the same instant, (2 East's C. L. P. 557) See also 1 vol. of the City-Hall Recorder, p. 30, with ib. p. 177.

SUMMARY FOR DECEMBER, 1820.

SITTINGS.

There were about four hundred and fifty causes noticed for trial, and the seventy-third cause, in the regular course on the calendar, was reached. The sittings commenced on the 20th of November, and terminated on the 16th instant, before Judge Van Ness; and, in that time, about one hundred and eighteen verdicts were rendered.

SESSIONS.

BURGLARY.

John Wilson, a black, for this offence, in breaking the dwelling-house of Joseph Kissam, and stealing a time-piece belonging to him, was convicted, and sentenced to the state prison for life. The owner advertised the time-piece; and, shortly afterwards, a part of it was brought by one Sales, a black, to a gentleman in this city for sale. He obtained the other part from Sales, and restored the article complete to the owner. The prisoner was apprehended; and, in his examination in the police, exculpated Sales, by whom he had sent it for sale.

FORGERY AND COUNTERFEITING.

Lawrence Quackenbos and *Peter Chambers*, were severally indicted, tried, and convicted; the former for having in possession and passing, knowing it to be counterfeit, a $5 bill of the Phoenix Bank; the latter for the same offence, in uttering four forged checks on the City Bank and Mechanics' Bank, and they were each sentenced three years to the state prison.

On the 18th of November, Quackenbos went to the store of Abraham Frost, and offered him the bill laid in the indictment, for some articles. Frost, in consequence of having been some time before imposed on by the prisoner, who passed to him a counterfeit bill on the United States' Bank, detained the Phoenix Bank Bill, and gave information to Hays, who shortly afterwards found the prisoner at the market; and, on searching him, found a $5 coun-

terfeit bill on the Middle District Bank. He resisted the search, and gave no satisfactory account of the possession of the bills.

Chambers went to the shop of Charles Gill, (41 Chatham) and by the name of Peter Compton, engaged a pair of boots. On a Saturday evening, after the bank had closed, he went for them, and gave in payment one of the checks, payable to Peter Compton, and received the change. Having thus succeeded, the prisoner, in attempting to pass one of the others, was detected. It appeared, that two of the checks were forged on Amos Palmer, one of them on the firm of Palmer and Son, and the fourth on that of King and Curtis. The prisoner, on his trial, produced a certificate of good character from about twenty persons, residing, as was alleged, in Philadelphia; but, on examining a gentleman well acquainted in that city, he knew none of those persons. On receiving sentence, the prisoner manifested, or feigned, much contrition, and stated, that he had found the checks, rolled up in a paper, at the corner of Pearl-street and Maiden-lane, and had been "seduced by the instigation of the Devil" to pass them.

GRAND LARCENY.

Bisant Dargo and *Jourdan Jackson*, for stealing the goods of Joel Root, were tried for, and convicted of this offence, and sentenced to the state prison seven years each.

Thomas Reece and *James Welsh*, for this offence, (the first for stealing the goods of Gilbert Lyon, and the other those of Nathaniel H. Tapping) were severally convicted, on confession, and sentenced each to the state prison three years.

Jacob Van Ever, for this offence, in stealing the goods of John Johnson, of Staten-Island, was tried, convicted, and sentenced to the state prison fourteen years.

The store was broken open, and robbed of a large quantity of dry goods, in the night, and brought to this city in a boat; and, through the vigilance of the police, a part of them was traced to the possession of the prisoner, at a house in Banker-street, where he lived with *Lydia Ann Blake*. She was introduced as a witness in his behalf, to prove that he was not out of the city the night in which the felony was committed; but, from her testimony, it appeared that he was absent that night, and came with the other thieves early on Sunday morning, with the goods in their possession. The prisoner, in 1802, was sentenced to the penitentiary, in 1804, to the state prison ten years, in 1814, to the same place, in the following year he was again sentenced. How many *pardons* he obtained it is needless to inquire.

Sandy M'Laughlin, *John Smiley*, *Luxton Dusenberry*, *and Henry Adams*, boys, were indicted, tried, and convicted of this offence, in stealing $140 in bank bills, and the goods of Francis Stephani, and the two first and last of them were sentenced to the state prison five years each, and the other seven years.

It appeared, that the prisoners, while prowling the streets for plunder, found that no person was in the shop of the prosecutor, at 51 Chatham-street; and, while one of them went in and robbed the store, the others remained on the outside, watching his movements; and, when the business was accomplished, they went over to Brooklyn, and divided the spoil. The prosecutor ascertained, that one of them had passed a $10 bill, on a bank in Baltimore, at a grocery in Allen-street, which bill was produced on the trial, and identified. By that means, the prisoners were detected, and parts of the property, through the vigilance of Hays, found either at the respective abodes of the prisoners or in their possession. Dusenberry had been brought several times into the Court, for similar offences.

PETIT LARCENY.

John Thompson, *Michael Smith*, *Samuel Heburn*, *John Benjamin*, *John Peterson*, *Morris Mitchell*, *Joseph Robbins*, *Susan Ogden*, *Jacob Van Ever*, *William Wright*, *Rachel Green* and *Thomas Mills*, were severally convicted of this offence; and the two first named were sentenced to the penitentiary three years each, the one following for two years, the four following for eighteen months each, and the residue for shorter periods, except Van Ever and the one last named, who were fined, the former nominally, and the other $100 and the costs.